

person is liable to such residents under section 1679g of this title as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

## (2) Rights of Commission

### (A) Notice to Commission

The State shall serve prior written notice of any civil action under paragraph (1) upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

### (B) Intervention

The Commission shall have the right—

- (i) to intervene in any action referred to in subparagraph (A);
- (ii) upon so intervening, to be heard on all matters arising in the action; and
- (iii) to file petitions for appeal.

## (3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

## (4) Limitation

Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

(Pub. L. 90-321, title IV, §410, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-460.)

### REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

## § 1679i. Statute of limitations

Any action to enforce any liability under this subchapter may be brought before the later of—

- (1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or
- (2) in any case in which any credit repair organization has materially and willfully misrepresented any information which—
  - (A) the credit repair organization is required, by any provision of this subchapter, to disclose to any consumer; and

(B) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter,

the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation.

(Pub. L. 90-321, title IV, §411, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-461.)

## § 1679j. Relation to State law

This subchapter shall not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with any law of any State except to the extent that such law is inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 90-321, title IV, §412, as added Pub. L. 104-208, div. A, title II, §2451, Sept. 30, 1996, 110 Stat. 3009-462.)

## SUBCHAPTER III—CREDIT REPORTING AGENCIES

## § 1681. Congressional findings and statement of purpose

### (a) Accuracy and fairness of credit reporting

The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness,<sup>1</sup> credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

### (b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

(Pub. L. 90-321, title VI, §602, as added Pub. L. 91-508, title VI, §601, Oct. 26, 1970, 84 Stat. 1128.)

### EFFECTIVE DATE OF 2003 AMENDMENT

Pub. L. 108-159, §3, Dec. 4, 2003, 117 Stat. 1953, provided that: "Except as otherwise specifically provided in this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title] and the amendments made by this Act—

<sup>1</sup> So in original. Probably should be "creditworthiness,".

“(1) before the end of the 2-month period beginning on the date of enactment of this Act [Dec. 4, 2003], the Board and the Commission shall jointly prescribe regulations in final form establishing effective dates for each provision of this Act; and

“(2) the regulations prescribed under paragraph (1) shall establish effective dates that are as early as possible, while allowing a reasonable time for the implementation of the provisions of this Act, but in no case shall any such effective date be later than 10 months after the date of issuance of such regulations in final form.”

[For final rules adopted by Board of Governors of the Federal Reserve System and Federal Trade Commission establishing effective dates for provisions of Pub. L. 108-159, see 68 F.R. 74467 (joint interim final rules) and 69 F.R. 6526 (joint final rules).]

#### EFFECTIVE DATE

Section 504(d) of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, §602, Oct. 26, 1970, 84 Stat. 1136, provided that: “Title VI [enacting this subchapter] takes effect upon the expiration of one hundred and eighty days following the date of its enactment [Oct. 26, 1970].”

#### SHORT TITLE

This subchapter known as the “Fair Credit Reporting Act”, see Short Title note set out under section 1601 of this title.

#### STUDY OF EFFECTS OF CREDIT SCORES AND CREDIT-BASED INSURANCE SCORES ON AVAILABILITY AND AFFORDABILITY OF FINANCIAL PRODUCTS

Pub. L. 108-159, title II, §215, Dec. 4, 2003, 117 Stat. 1984, provided that:

“(a) STUDY REQUIRED.—The Commission and the Board, in consultation with the Office of Fair Housing and Equal Opportunity of the Department of Housing and Urban Development, shall conduct a study of—

“(1) the effects of the use of credit scores and credit-based insurance scores on the availability and affordability of financial products and services, including credit cards, mortgages, auto loans, and property and casualty insurance;

“(2) the statistical relationship, utilizing a multivariate analysis that controls for prohibited factors under the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.] and other known risk factors, between credit scores and credit-based insurance scores and the quantifiable risks and actual losses experienced by businesses;

“(3) the extent to which, if any, the use of credit scoring models, credit scores, and credit-based insurance scores impact on the availability and affordability of credit and insurance to the extent information is currently available or is available through proxies, by geography, income, ethnicity, race, color, religion, national origin, age, sex, marital status, and creed, including the extent to which the consideration or lack of consideration of certain factors by credit scoring systems could result in negative or differential treatment of protected classes under the Equal Credit Opportunity Act, and the extent to which, if any, the use of underwriting systems relying on these models could achieve comparable results through the use of factors with less negative impact; and

“(4) the extent to which credit scoring systems are used by businesses, the factors considered by such systems, and the effects of variables which are not considered by such systems.

“(b) PUBLIC PARTICIPATION.—The Commission shall seek public input about the prescribed methodology and research design of the study described in subsection (a), including from relevant Federal regulators, State insurance regulators, community, civil rights, consumer, and housing groups.

“(c) REPORT REQUIRED.—

“(1) IN GENERAL.—Before the end of the 24-month period beginning on the date of enactment of this Act

[Dec. 4, 2003], the Commission shall submit a detailed report on the study conducted pursuant to subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.

“(2) CONTENTS OF REPORT.—The report submitted under paragraph (1) shall include the findings and conclusions of the Commission, recommendations to address specific areas of concerns addressed in the study, and recommendations for legislative or administrative action that the Commission may determine to be necessary to ensure that credit and credit-based insurance scores are used appropriately and fairly to avoid negative effects.”

#### FTC STUDY OF ISSUES RELATING TO THE FAIR CREDIT REPORTING ACT

Pub. L. 108-159, title III, §318, Dec. 4, 2003, 117 Stat. 1998, provided that:

“(a) STUDY REQUIRED.—

“(1) IN GENERAL.—The Commission shall conduct a study on ways to improve the operation of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.].

“(2) AREAS FOR STUDY.—In conducting the study under paragraph (1), the Commission shall review—

“(A) the efficacy of increasing the number of points of identifying information that a credit reporting agency is required to match to ensure that a consumer is the correct individual to whom a consumer report relates before releasing a consumer report to a user, including—

“(i) the extent to which requiring additional points of such identifying information to match would—

“(I) enhance the accuracy of credit reports; and

“(II) combat the provision of incorrect consumer reports to users;

“(ii) the extent to which requiring an exact match of the first and last name, social security number, and address and ZIP Code of the consumer would enhance the likelihood of increasing credit report accuracy; and

“(iii) the effects of allowing consumer reporting agencies to use partial matches of social security numbers and name recognition software on the accuracy of credit reports;

“(B) requiring notification to consumers when negative information has been added to their credit reports, including—

“(i) the potential impact of such notification on the ability of consumers to identify errors on their credit reports; and

“(ii) the potential impact of such notification on the ability of consumers to remove fraudulent information from their credit reports;

“(C) the effects of requiring that a consumer who has experienced an adverse action based on a credit report receives a copy of the same credit report that the creditor relied on in taking the adverse action, including—

“(i) the extent to which providing such reports to consumers would increase the ability of consumers to identify errors in their credit reports; and

“(ii) the extent to which providing such reports to consumers would increase the ability of consumers to remove fraudulent information from their credit reports;

“(D) any common financial transactions that are not generally reported to the consumer reporting agencies, but would provide useful information in determining the credit worthiness of consumers; and

“(E) any actions that might be taken within a voluntary reporting system to encourage the reporting of the types of transactions described in subparagraph (D).

“(3) COSTS AND BENEFITS.—With respect to each area of study described in paragraph (2), the Commis-

sion shall consider the extent to which such requirements would benefit consumers, balanced against the cost of implementing such provisions.

“(b) REPORT REQUIRED.—Not later than 1 year after the date of enactment of this Act [Dec. 4, 2003], the chairman of the Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing a detailed summary of the findings and conclusions of the study under this section, together with such recommendations for legislative or administrative actions as may be appropriate.”

#### FTC STUDY OF THE ACCURACY OF CONSUMER REPORTS

Pub. L. 108–159, title III, §319, Dec. 4, 2003, 117 Stat. 1999, provided that:

“(a) STUDY REQUIRED.—Until the final report is submitted under subsection (b)(2), the Commission shall conduct an ongoing study of the accuracy and completeness of information contained in consumer reports prepared or maintained by consumer reporting agencies and methods for improving the accuracy and completeness of such information.

“(b) BIENNIAL REPORTS REQUIRED.—

“(1) INTERIM REPORTS.—The Commission shall submit an interim report to the Congress on the study conducted under subsection (a) at the end of the 1-year period beginning on the date of enactment of this Act [Dec. 4, 2003] and biennially thereafter for 8 years.

“(2) FINAL REPORT.—The Commission shall submit a final report to the Congress on the study conducted under subsection (a) at the end of the 2-year period beginning on the date on which the final interim report is submitted to the Congress under paragraph (1).

“(3) CONTENTS.—Each report submitted under this subsection shall contain a detailed summary of the findings and conclusions of the Commission with respect to the study required under subsection (a) and such recommendations for legislative and administrative action as the Commission may determine to be appropriate.”

#### DEFINITIONS

Pub. L. 108–159, §2, Dec. 4, 2003, 117 Stat. 1953, provided that: “As used in this Act [see Short Title of 2003 Amendment note set out under section 1601 of this title]—

“(1) the term ‘Board’ means the Board of Governors of the Federal Reserve System;

“(2) the term ‘Commission’, other than as used in title V [20 U.S.C. 9701 et seq.], means the Federal Trade Commission;

“(3) the terms ‘consumer’, ‘consumer report’, ‘consumer reporting agency’, ‘creditor’, ‘Federal banking agencies’, and ‘financial institution’ have the same meanings as in section 603 of the Fair Credit Reporting Act [15 U.S.C. 1681a], as amended by this Act; and

“(4) the term ‘affiliates’ means persons that are related by common ownership or affiliated by corporate control.”

#### § 1681a. Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term “person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term “consumer” means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term “consumer report” means any written, oral, or other communication of any information by a consumer

reporting agency bearing on a consumer’s credit worthiness,<sup>1</sup> credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term “consumer report” does not include—

(A) subject to section 1681s–3 of this title, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (o) or (x) of this section.

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 1681b(g)(3) of this title, the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

<sup>1</sup> So in original. Probably should be “creditworthiness.”